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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK DIVISION

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UNITED STATES
DISTRICT COURT

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:
DELL INC., a Delaware corporation,
:
Plaintiff,
:
v.
:
COMPUTER SALES AND SERVICE
COMPANY, PC MAKER LLC, and JACK
SHULMAN
:
Defendants. X

Case No. Civ. 04-5297 WHW/SDW

**FINAL JUDGMENT AND ORDER
UPON CONSENT**

This cause having come on for hearing and by and with the consent of the parties and the Court having been fully advised in the premises, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. This Court has jurisdiction over the parties to and subject matter of this action.
2. Dell is a corporation incorporated in and existing under the laws of the State of Delaware, with a principal place of business in Round Rock, Texas.
3. Defendant CSS is a New Jersey corporation doing business as "CompAmerica," "CompAmerica.com," and/or "CSS," with its principal place of business in Cranford, New Jersey.
4. Defendant PC Maker is a New Jersey corporation with its principal place of business in Cranford, New Jersey.

5. Defendant Jack Shulman is a resident of the State of New Jersey and the Chief Executive Officer of Defendant CSS and Managing Member of Defendant PC Maker.

6. Dell has extensively used numerous inherently distinctive names and marks comprised, in whole or in part, of "DELL," (collectively, "DELL Marks"), in connection with its manufacturing, marketing, sale, distribution and/or provision of computer hardware, software and peripherals, consumer electronics, computer-related consulting, and installation, networking, maintenance, leasing, warranty and technical support services ("Dell's Products and Services").

7. Dell owns valid and strong rights in its DELL Marks.

8. Dell has registered many of its Dell Marks in the United States Patent and Trademark Office ("PTO"), some of which are listed in Exhibit A. These registrations are valid, subsisting, and owned by Dell and Reg. Nos. 1,615,571 (DELL), and 1,860,272 (DELL Logo Design), and 1,498,470 (DELL and Design) are incontestable.

9. Dell has extensively used its OPTIPLEX, INSPIRON, and LATITUDE marks in connection with the manufacturing, marketing, sale, distribution and/or provision of computer hardware and peripherals, and Dell owns valid and strong rights in these marks.

10. Dell owns valid, subsisting and incontestable registrations for OPTIPLEX, Reg. No. 1,977,038, INSPIRON, Reg. No. 2,254,835, and LATITUDE, Reg. No. 1,962,286 in the PTO.

11. Dell created certain images featuring photographs of Dell computers for use on its website, which are depicted in Exhibit B.

12. Dell has been, and now is, the sole proprietor of all right, title and interest in and to the images described in Paragraph 11 and depicted in Exhibit B, and Dell has secured registrations of these images with the United States Copyright Office, Reg. Nos. VA 1-277-237 and VA 1-277-238.

13. Defendants have been and are in the business of manufacturing, marketing, selling, distributing and/or providing personal computers, laptops, consumer electronics, and servers as well as web hosting, computer leasing and repair, and technical support services ("Defendants' Products and Services").

14. Defendants have used various websites, including, but not limited to, www.compamerica.com, www.compamericadirect.com, www.american-computer.com, www.acpc.com, www.cssusa.net, www.pcmaker.net, www.pcmakerllc.com, www.pcmakerllc.net, www.kioskpcs.com, www.digi-memo.com, www.dotgov.us, www.compacademic.com, and www.ticorporation.com (collectively, "Defendants' Websites") in connection with their promotion, marketing, and sale of Defendants' Products and Services.

15. Defendants adopted and began using THE DELL KILLERS™ in various formatives, DELL HELL™, EASIER THAN DELL™ and EASIER THAN DELL PCs as trademarks and began using Dell's Logo Design Mark and former trade name, "Dell Computer," in connection with the marketing and sale of Defendants' Products and Services.

16. On or about October 19, 2004, Jack Shulman applied in his own name to register the "The DellKillers" trademark for "computer hardware" in the PTO, App. Ser. No. 78,501,990.

17. Defendants made statements about Dell and its products and services to promote Defendants' Products and Services, and these statements have included, "Better made than Dell"; "More options than Dell"; "Better quality than Dell"; "Better service than Dell"; "More choices than Dell"; and "Newer designs than Dell."

18. Subsequent to Dell's creation of the two images described in paragraph 11 above, Defendants displayed copies of those images on Defendants' Websites.

19. On or about October 13, 2004, Defendant PC Maker registered the following domain names: "thedellkillers.com"; "dellkiller.com"; "thedellkiller.com"; and, "dellkiller.com" (collectively, "Dellkillers Websites") and launched websites at these addresses.

20. Defendants used the Dellkillers Websites as a means of promoting Defendants' Products and Services and as a means of driving Internet traffic to Defendants' Websites.

21. Defendants' Dellkillers Websites used various Dell trademarks, including but not limited to "dell," "dell laptop," "dell pc," "dell server," "optiplex," "inspiron," and "latitude" [sic] in their metatags while under construction.

22. The Dellkillers Websites contained or conveyed to viewers numerous statements about Dell, its products and services, and its business practices, including, but not limited to, the following:

- (a) Dell is guilty of "corruption of government";
- (b) Dell is guilty of "fraudulent book-keeping";
- (c) Dell does not provide product support for its products and mistreats product users;
- (d) Dell has a "mob-like mentality;"
- (e) "Dell regularly engage [sic] in Bait and Switch tactics";
- (f) "Dell is under investigation for broad spectrum bribery of public officials";
- (g) "Dell regularly files false SEC documents";
- (h) Dell has had repeated recalls of laptops for fire and electrical shock problems;
- (i) "Dell is not an independent company. It is a simple proxy of the IBM PC Company";
- (j) Dell is not financially stable;
- (k) Dell personal computers are inadequately ventilated and cooled;
- (l) "Dell outsources literally all of it's [sic] Help Desk and Support to India, along with it's [sic] Over the Phone Sales Force";
- (m) Dell uses power supplies intentionally designed to break down;
- (n) Dell's computers suffer from outdated construction which leads to their interiors getting dirtier than and suffering more fractures than the industry average and "often creating open/closure issues that can injure their owner"; and
- (o) Dell has made secret pay ins to off shore funds to influence Government buyers to purchase Dell products.

23. Dell brought this suit alleging that Defendants' above actions constitute trademark infringement under 15 U.S.C. § 1114, unfair competition under 15

U.S.C. § 1125(a)(1)(A), trade libel under 15 U.S.C. § 1125(a)(1)(B), trademark dilution under 15 U.S.C. § 1125(c), cybersquatting under 15 U.S.C. § 1125(d), copyright infringement under 17 U.S.C. § 501, trademark dilution under N.J. Stat. Ann. § 56:3-13.20 and common law of New Jersey, unfair competition under N.J. Stat. Ann. § 56:4-1 to 2 and common law of New Jersey, and product disparagement and libel under the common law of New Jersey. Defendants have answered denying liability, but are desirous of settling this matter.

24. Defendants will not directly or indirectly use in any manner, register, or apply to register any DELL Mark, the "Dell Computer" name, the DELL Logo Design mark, and any other mark, term or other symbol that is (a) a colorable imitation or simulation of any of these marks or (b) that dilutes or is likely to dilute the distinctiveness of or tarnish the goodwill associated with any them. The prohibitions of this paragraph include, but are not limited to, use and registration of EASIER THAN DELL, EASIER THAN DELL PCs, DELL HELL, THE DELLKILLERS, THE DELL KILLER, DELL KILLERS and DELL KILLER.

25. Paragraph 24 will not prevent Defendants' use and registration of THE DELL KILLERS, THE DELL KILLER, DELL KILLERS or DELL KILLER as service marks, or dellkillers.com, dellkiller.com, thedellkillers.com or thedellkiller.com as domain names, in connection with the provision of a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials related to Dell Comics, a comic book publishing company that operated from 1929 to 1973. Paragraph 24 also will not prevent Defendants from making one or more of the following statements, provided that any such statement is truthful and accurate

when made: “[Defendant name] repairs (and/or sells parts for) DELL computers;”

“[Defendant name] repairs (and/or sells parts for) DELL [model name] computers;”

“[Defendant] repairs (and/or sells parts for) the following models of Dell Computers [model names].”

26. Defendants will not do any act or thing that is likely to induce the belief that Defendants’ businesses, products or services are in any way connected with Dell’s businesses, products or services or are sponsored by or approved by Dell.

27. Defendants will not directly or indirectly make, display, publish, or disseminate any of the statements and claims enumerated in paragraph 22, provide links to webpages containing same or allow other websites, including but not limited to, www.hey moron.com, www.hey moron.net, www.hey moron.org, www.deadendclub.com, www.deadendclub.net, and www.deadendclub.org to provide mirrored versions of any other web pages created or controlled by Defendants that contain any of the statements and claims recited in paragraph 22.

28. Defendants will not make, display, publish, or disseminate any of the statements and claims recited in paragraph 22 via any related or unrelated entity or website under Defendants’ control.

29. Defendants will not make, display, publish, or disseminate in any commercial advertising or promotion any of the following comparative claims or provide

links to any web page containing same: "Better made than Dell"; "More options than Dell"; "Better quality than Dell"; "Better service than Dell"; "More choices than Dell"; and "Newer designs than Dell." Defendants will not make any false or misleading statements about Dell, its business practices or its products and services in any commercial advertising or promotion. The forgoing notwithstanding, Defendants shall not be held accountable for comparative statements made on the channel store currently accessed through Defendants' Websites or on other channel stores to which Defendants' Websites provide access in the future, provided such stores are reputable.

30. Defendants will not produce, display or distribute copies of or derivative works or copies of derivative works based on works in which Dell owns the copyright.

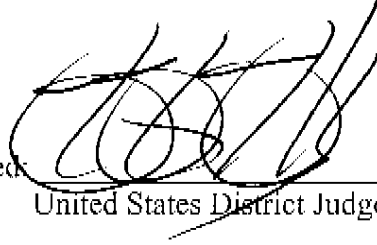
31. Within seven (7) days after entry of this Order, Defendants will:
- (a) abandon all of their applications in the PTO that are inconsistent with the provisions of paragraphs 24 and 25;
 - (b) remove all direct, indirect, and implied references to Dell from press releases on Defendants' Websites, and Defendants will not issue any press releases about this litigation; and
 - (c) recall from any service which Defendants have used to distribute press releases any and all press releases issued by Defendants that use or refer to "The DellKillers" in connection with Defendants' goods and services, or that use or refer to the EASIER THAN DELL mark or any formative or colorable imitation of it or of any Dell Mark.

32. Each party shall bear its own attorneys' fees and costs.

Dated

30 Mar 05

Entered


United States District Judge

CONSENTED TO:

DELL INC.

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PC MAKER.LLC, AND JACK SHULMAN

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EXHIBIT A. Dell's DELL Marks

| <u>MARK</u> | <u>GOODS AND SERVICES</u> | <u>REG. NO.</u> |
|--|--|------------------------|
| DELL | Computers and computer peripherals, namely monitors, keyboards, printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, cards and memory add-ons, memory boards and chips, cables and connectors, operating software and instruction manuals sold together as a unit. | 1,616,571 |
| DELL (Logo Design) | Computers and parts therefor. | 1,860,272 |
| DELL and Design Computers | Computers. | 1,498,470 |
| DELL and Design (the "Aviator design") | Computers, computer peripheral devices and parts and fittings therefor; monitors, keyboards, printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, CD-ROM drives, DVD-drives, electronically encoded or magnetically encoded cards and memory add ons, memory boards and chips, cables and connectors, all for use with computers; computer operating software; electronic computer manuals sold as a unit. | 2,817,366 |
| DELL | Custom manufacture of computers for others. | 2,236,785 |
| DELL | Computer peripheral, namely computer projectors | 2,794,705 |
| DELL | Maintenance and repair of computer hardware; installation of computer networks; installation of computer systems | 2,806,769 |
| DELL | Technical support services, troubleshooting of computer hardware and software problems; consulting services in the field of design, selection, implementation and use of computer hardware and software systems for others | 2,806,770 |
| DELL DIMENSION | Computers and computer peripherals, namely, monitors, keyboards, printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, cd-rom drives, cards and memory add-ons, memory boards, chips, cables and connectors, operating software and instruction manuals sold together as a unit. | 2,030,084 |
| DELL PRECISION | Computers, computer peripheral devices and parts and fittings therefor; monitors, keyboards, printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, CD-ROM drives, data storage units, and electronic or magnetic cards and memory add ons, memory boards and chips, cables and connectors, all for use with computers. | 2,284,782 |

| <u>MARK</u> | <u>GOODS AND SERVICES</u> | <u>REG. NO.</u> |
|-------------------------|--|-----------------|
| DELL AXIM | Computer hardware, handheld computers, personal digital assistant (PDA), electronic organizers, electronic notepads, computer peripherals, namely, modems, memory cards, compact flash cards; blank smart media cards, batteries, battery chargers, digital audio recorders, and digital audio playback units, mp3 players, headphones, handheld computer/PDA carry bags, power adapters, car adapters, handheld computer keyboards, scanners, cradles for recharging and connecting to other devices and peripherals, cables and connectors for the above; and instruction manuals sold therewith as a unit for all the aforesaid goods | 2,800,354 |
| WWW.DELL.COM | Computers, computer peripheral devices, namely, monitors, keyboards, printers, mouses, co-processors, modems, hard and floppy disk drives, tape drives, CD-ROM drives, DVD drives, electronic or magnetic cards for memory add-on and memory boards and chips, data storage units, namely, fibre channel drives and SCSI (small computer system interface) drives, cables and connectors, parts and fittings for all of the above, all for use with computers; computer operating software and instruction manuals all sold together as a unit. | 2,390,851 |
| DELL DOLLARS | Promoting the use and sale of credit card accounts of others through the administration of a credit card incentive award program. | 2,373,817 |
| DELL FINANCIAL SERVICES | Leasing of computers | 2,333,902 |
| DELL4ME | Int'l Class 38: Providing multiple-user access to a global computer information network Int'l Class 42: Technical support services, namely, customer assistance and troubleshooting of computer hardware and software problems via telephone and a global computer network | 2,425,829 |
| DELL | Credit card services | 2,527,880 |
| DELL OPENMANAGE | Computer software for the setup and management of computer server systems | 2,715,756 |
| DELL PICTURE STUDIO | Computer software, namely, digital, photo applications for organizing, manipulating and editing images; capturing, retrieving, storing and presenting digital photos | 2,578,777 |
| EASY AS DELL | Custom manufacture of computers for others | 2,762,787 |
| DELL PREFERRED ACCOUNT | Credit card services | 2,757,178 |

| <u>MARK</u> | <u>GOODS AND SERVICES</u> | <u>REG. NO.</u> |
|--------------------|--|-----------------|
| DELL TRAVELLITE | Computer accessory, namely, plastic module which fills in the empty space of a portable computer when the drive or battery pack is removed | 2,742,521 |
| OPTIPLEX | computer systems, namely computers, computer hardware and operating software pre-programmed therein; computers; peripherals and instruction manuals sold as a unit | 1,977,038 |
| INSPIRON | computers, computer peripherals and parts therefor, monitors, keyboards, printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, CD-ROM drives, electronically encoded or magnetically encoded cards and memory add on chips or cards, memory boards and chips, cables and connectors, all for use with computers, computer operating software and instruction manuals all sold together as a unit. | 2,254,835 |
| LATITUDE | computers and instructional manuals sold therewith | 1,962,286 |

EXHIBIT B. Dell's Copyright Protected Images

